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Supreme Court, U.S.
FILED

No. 08-426 SEP 26 2008

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In The

Supreme Court of the United States

BONNIE HARBUCK,

Petitioner,

v.

HOUSTON COUNTY,
GOVERNOR'S ESTATE, et. al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

PETITION FOR WRIT OF CERTIORARI

BONNIE MICHELLE SMITH
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QUESTION PRESENTED

How much money must change hands in financial dealings to constitute a conflict of interest or impartiality of a Judge or Special Master to warrant recusal under the Fourteenth Amendment when the Special Master sold property to the Developer for a profit prior to Petitioner's Quiet Title Action?

RULE 14.1(b) STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Appellant and Petitioner: Bonnie Harbuck

Appellee and Respondents:

Governor's Estate, Walter Griff Clements,
Houston County,

Michael Meiner, City of Warner Robins

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PETITION FOR A WRIT OF CERTIORARI

Bonnie Harbuck respectfully petitions for a writ of certiorari to review the opinion and judgment of the Supreme Court of Georgia.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia dated May 19, 2008 is officially reported as *Harbuck v. Houston County*, 284 Ga. 4 (2008), and is reproduced at App. A.

JURISDICTION

The judgment of the Supreme Court of Georgia sought to be reviewed was entered on May 19, 2008, and reconsideration was denied on June 30, 2008. This petition is timely under 28 U.S.C. Section 2101(c) and the Supreme Court Rule 13.1 because it is being filed within 90 days of the entry of the opinion and judgment sought to be reviewed. This Court has jurisdiction to review the judgment of the Supreme Court of Georgia pursuant to Article III of the U.S. Constitution. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions involved are the Fourteenth Amendment to the Constitution, Article 6, Clause 2 of the Constitution, the Code of Judicial Conduct of the Rules of the Judicial Qualifications Commission, and the Federal Code of Conduct for United States Judges.

STATEMENT OF THE CASE

This action arises from a Georgia Petition to Quiet Title Action. Harbuck owned property in a subdivision that a Developer, Governor's Estate, sought to take to make a road for a thoroughfare for at least 100 cars per day by Harbuck's home, over property that she had a deed. Developer refused to develop access to his property from a major artery of the County instead of through a residential neighborhood.

Harbuck filed a Quiet Title Action regarding her upkeep of the property for over seven years. The property was originally to be a road per the plat, but was never paved or maintained by the former Developer, Griff Clements, or Houston County. Harbuck also had a deed to the entire subdivision recorded after all parts of the subdivision had been conveyed, leaving only the section in front of Harbuck's home that was intended as an unpaved turnaround that Clements would pave at a later date, per the unrecorded plat.

Developer sought to commandeer Harbuck's property and sought an emergency order from the trial court when Harbuck placed vehicles on the disputed property to stop the Developer from cutting down the trees on the property. (App. 11) Thereafter the Trial Court appointed a Special Master to hear the case, pursuant to Georgia Statute. The trial Court appointed Arthur H. Clarke, Jr.

Harbuck filed a motion to recuse Clarke as Special Master which was denied. (App. 8) Three people: Clarke, Carreker, and McConnell, a retired senior Judge from the Circuit, sold property to the Developer, Governor's Estate for approximately $200,000 in 2005. The trial Court found no evidence warranting recusal of the Special Master. (App. 8) The Quiet Title Petition was filed in 2006.

The Georgia Supreme Court found the financial transaction between the Special Master and Developer unrelated to the case, sufficient to rise to the level of recusal. (App. 1)

Harbuck petitions for review of the Supreme Court decision that violated the Fourteenth Amendment to be afforded a fair trial and due process rights and Article 6 Clause 2 of the Constitution, when the Lower Court found no financial impropriety between the Special Master and the Developer sufficient to rise to the level of recusal and appointment of a new Special Master with no financial dealings with any parties in the case.

REASONS FOR GRANTING THE PETITION

This case is subject to being repeated again. The Federal Code of Conduct for United States Judges mirrors the Code of Judicial Conduct of the Rules of Judicial Qualifications Commission for Georgia as well as the ABA Model Code of Judicial Conduct. Failure to ensure an impartial judiciary results in the gross constitutional violations for due process and a fair trial.

Codes of Judicial Conduct exist at the Federal and State Levels. Yet these codes and rules are useless if prior contacts and prior financial dealings are not part of the threshold for determining financial impropriety.

The right to receive a fair and unbiased trial is guaranteed in the Constitution. Canon 2 of the Georgia Judicial Conduct of the Rules of the Judicial Qualifications Commission states that, "judges shall avoid impropriety and the appearance of impropriety in all their activities." Code of Judicial Conduct of the Rules of the Judicial Qualifications Commission.

The Georgia rule mirrors the Federal Code of Conduct for United States Judges. Canon 2 of the Code of Conduct for United States Judges states a judge should avoid impropriety and the appearance of impropriety in all activities.

"The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a

reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired." Commentary Cannon 2A, Code of Conduct for United States Judges.

The Special Master, a second person, and the retired Senior Judge of the Circuit sold property to the Developer for a profit. How much money must change hands in financial dealings to constitute a conflict of interest or impartiality? Is there a bright-line rule that because the sale was $199,400 and not $200,000 that no appearance of financial impropriety was triggered?

Judges are called to a higher standard. It is often times burdensome and problematic. Yet, the failure to recuse Judges and those who stand in Judges' places as Special Masters when they have financially gained from a party in a case erodes the very spirit and letter of the Constitution. Every person is entitled to due process and a fair trial.

It is bad enough in this case that the County allowed a Developer to create a road that the County purportedly owned by virtue of a plat but that the County never maintained for private economic development. It is bad enough that Harbuck requested a jury trial allowed under the statute and one was denied by the trial court through summary judgment.

It is bad enough that the Special Master attempted to invalidate Harbuck's deed, when Harbuck never sought to have her deed invalidated. It is bad

enough that the Georgia Supreme Court decision did not coincide with subsequent cases after the briefing schedule. Yet these are state court rulings of which exists no jurisdiction to disturb the rulings and interpretations of facts.

But to deny that the sale of property by the Special Master to the Developer does not rise to the level sufficient to show bias or the appearance of bias, solidifies why the opinion of our judicial system is perceived in this country as broken.

Financial impropriety or the amount of money that must change hands to trigger financial impropriety is reviewable at this Court because such denials trigger the Fourteenth Amendment and the right to due process and a fair trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Georgia Supreme Court Reports

HARBUCK v. HOUSTON COUNTY

284 Ga. 4 (2008)

HARBUCK v. HOUSTON COUNTY et al.

No. S08A0025.

Supreme Court of Georgia.

Decided May 19, 2008.

Reconsideration Denied June 30, 2008.

BENHAM, Justice.

In 1999, Bonnie Harbuck purchased and built a home on Lot 4, Block "A" of a subdivision called Ashley Oaks in Houston County. Great Oak Way is a road that runs alongside the front of Harbuck's property. In 2006, appellee Governor's Estate, LLC ("Governor's Estate") began developing land adjacent to Harbuck's property. As part of the development, Governor's Estate sought to complete the unpaved portion of Great Oak Way to provide access to its development. Harbuck filed a petition to establish title to the unpaved portion of Great Oak Way. A special master ruled that appellees Houston County and Governor's Estate were entitled to notice of the action and they became parties. In his recommendation to the trial court, the special master found that Harbuck could not sue a subdivision of the state for adverse possession and that Harbuck did not have color of title. The special master also found that, to avoid dismissal, Harbuck would have to show that the right of way was never dedicated, that Houston

County failed to accept the dedication, or that Houston County abandoned the right of way. The special master left these issues to the trial court for disposition. After the special master's report was issued, appellees moved for summary judgment. The trial court granted the motion for summary judgment, finding there were no issues of fact concerning color of title, dedication and acceptance, or abandonment.

On appeal, Harbuck contends that it was erroneous for the trial court, as opposed to the special master, to rule on the motions for summary judgment, that appellees lacked standing, and that the trial court erred in failing to recuse the special master. Finding no error, we affirm.

1. Harbuck's assertion that only the special master had jurisdiction to consider and rule upon appellees' motions for summary judgment is without merit. In quiet title actions, a special master exercises jurisdiction to "ascertain . . . the validity . . . of petitioner's title" (OCGA § **23-3-66**), but there is no authority divesting the trial court's overall jurisdiction of the case. *Eardley v. McGreevy*, **279 Ga. 562, 564-565** (2) (**615SE2d744**) (2005) ("in submitting a quiet title case to a special master, the trial court does not cede jurisdiction to render a final decision"); *Heath v. Stinson*, **238 Ga. 364** (**233 SE2d 178**) (1977) (special master could not grant summary judgment because OCGA § **23-3-67** gives only the trial court authority to issue the final decree). Therefore, it was not reversible error for the trial court to consider and

rule upon appellees' motions for summary judgment which finally terminated the action.

2. Similarly, Harbuck's contention that appellees lack standing is unsubstantiated. The special master, pursuant to OCGA § **23-3-65**(a)(1), determined that appellees Houston County and Governor's Estate, among others, were entitled to notice of appellant's quiet title action. Houston County and Governor's Estate filed pleadings in the action in accordance with OCGA § **23-3-65**(c) and established their interests in the proceeding. Houston County had a direct interest in the proceeding because the subdivision owner expressly dedicated all streets delineated in the recorded subdivision plat, including Great Oak Way, to public use.[1] Governor's Estate also had a stake in the outcome of the case because of its interest in paving the remainder of Great Oak Way to provide access to its new development. This interest in the quiet title action was sufficient to invoke the standing of appellees as possible adverse claimants of which Harbuck had actual or constructive notice. See *Resseau v. Bland*, **268 Ga. 634**(1) (**491 SE2d 809**) (1997).

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[1] In support of her standing argument, Harbuck relies on a typographical error in Houston County's answer to her complaint to allege that Houston County made an admission that it did not accept the dedication of the right of way. The trial court ultimately was not persuaded by this argument as it found no issue of fact in regard to acceptance. Even if such admission were found to be valid, it would not divest Houston County of standing in the proceeding, but would go to the merits.

3. On the merits, Harbuck argues that the right of way was never dedicated to Houston County. In support of this contention, she cites language from a copy of a plat she received at her 1999 closing, but which was never recorded by the developer.[2] The language states: "where dead ends occur during development temporary turn-arounds to be installed, if no future development within 14 months turn-arounds to be paved at the Developer's expense with all necessary utilities and easements to be dedicated to Houston County." Harbuck argues the right of way was never dedicated because it was left unpaved. A plain reading of this passage from Harbuck's unrecorded plat document, however, neither retracts nor obviates the presumption of express dedication created by the recorded subdivision plat survey which dedicated "to public use all areas shown or indicated on [the] plat as streets, alleys, easements, or parks." *See Hobbs v. Ware County*, **247 Ga. 385**(2) (**276 SE2d 575**) (1981) (the recording of a plat dedicating roads to the public creates a presumption of express dedication); *Ketchum v. Whitfield County*, **270 Ga. 180** (**508 SE2d 639**) (1998) (county held title to land by express dedication). Therefore, the trial court correctly determined there was no issue of fact in regard to dedication.

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[2] The document contained an incorrect plat reference and was labeled "NOT FOR RECORDING."

Likewise, we conclude the trial court correctly determined there was no issue of fact regarding the county's acceptance of the dedication.

> [I]t is not necessary that the public authorities should work the entire street within the confines of the grant, to make effectual the act of acceptance.
>
> Any improvements or repairs done on the street by the public authorities in recognition of the dedication of a defined strip of land for a street may be regarded as acceptance of the dedication.

Hobbs v. Ware County, **247 Ga. at 386**; *Ketchum v. Whitfield County*, **270 Ga. at 182**. Here, the unpaved section of the right of way to which Harbuck claims color of title is in fact the continuation of Great Oak Way, a street that was expressly dedicated and has been accepted by the county's acts of partially paving and maintaining the street. Id.

Because we affirm the trial court's ruling that there was no issue of fact regarding dedication or acceptance, it is impossible for Harbuck to prove abandonment for twenty years as provided in OCGA § **44-9-6** because the subdivision plat containing the express dedication was recorded in 1996. Since there was no abandonment by Houston County, the trial court was also correct in finding no issue of fact existed concerning color of title as it was irrelevant.

4. Finally, Harbuck contends that the trial court erred when it denied her motion to recuse the

special master. Harbuck based her motion for recusal on the fact that in 2005, the special master, along with two other individuals, deeded land unrelated to this action to appellee Governor's Estate. This single, unrelated transaction does not rise to a level sufficient to show bias worthy of granting a motion to recuse. *Wellons v. State*, **266 Ga. 77, 88** (18) (**463 SE2d 868**) (1995) (to prevail on a motion to recuse, a party must show that the judge harbored a bias stemming from an extrajudicial source that was "of such a nature of intensity that it would impede the exercise of impartial judgment"); *Ware v. Henry County Water & Sewerage Auth.*, **258 Ga. App.778, 782**(2) (**575 SE2d 654**) (2002) ("The alleged bias of the judge which would warrant a recusal must be of such a nature and intensity to prevent the defendant from obtaining a trial uninfluenced by the court's prejudgment. . . . [Cit.]"). Since there was no conflict of interest warranting recusal, the trial court did not err and we affirm the trial court's grant of summary judgment to appellees.

Judgment affirmed. All the Justices concur.

DECIDED MAY 19, 2008 –
RECONSIDERATION DENIED JUNE 30, 2008.

Title to land. Houston Superior Court. Before Judge Lumsden.

Bonnie M. Smith, for appellant.

G. E. Bo Adams, Arthur H. Clarke, Jr., O'Neil, Long & Hall, Michael J. Long, Wade & Elliott, James E. Elliott, Jr., for appellees.

IN THE SUPERIOR COURT
OF HOUSTON COUNTY
STATE OF GEORGIA

IN RE: BONNIE HARBUCK,	)	
Plaintiff,	)	
v.	)	
ALL PERSONS KNOWN AND UNKNOWN WHO CLAIM ADVERSELY TO PLAINTIFF'S TITLE TO LAND,	)	**Civil Action Number: 2006-V-84734-K**
Defendants.	)	

ORDER

(Filed Aug. 1, 2007)

On May 12, 2006, Plaintiff in the above-styled civil action filed a Petition to Establish Title. Special Master, Arthur Clarke, Jr., determined that the parties entitled to service of this action included Houston County, the City of Warner Robins, Michael W. Meiner, Governor's Estate, LLC, and Clements Title Service, Inc. After an interim report was filed by the special master, Defendants Houston County and Governor's Estate, LLC moved this Court for summary judgment. On July 31, 2007 parties to this action participated in a hearing on the merits of Defendants' Motions for Summary.

After reviewing the parties' briefs and hearing argument on the Motions for Summary Judgment, this Court determines that there is no genuine issue of material fact regarding color of title. In the same, this Court determines that there are no material issues of triable fact with regard to dedication of the property, acceptance of the property or abandonment of the property in question.

Therefore, Defendants' Motions for Summary Judgment are **GRANTED**.

It is **SO ORDERED** this the 1st day of August, 2007.

/s/ Katherine K. Lumsden
Hon. Katherine K. Lumsden
Judge of the Superior Court
Houston Judicial Circuit

IN THE SUPERIOR COURT
OF HOUSTON COUNTY
STATE OF GEORGIA

In Re: Bonnie Harbuck,	:	**CIVIL ACTION**
BONNIE HARBUCK	:	**84734**
Plaintiff	:	
	:	
VS	:	
ALL PERSONS KNOWN	:	
AND, UNKNOW WHO	:	
CLAIM ADVERSELY	:	
PLAINTIFF'S TITLE TO	:	
LAND	:	

ORDER

Plaintiff requested the Special Master appointed by the Court be replaced based on an allegation of conflict of interest. The Court having heard from the parties, finds there is no conflict of interest or appearance of impropriety that would warrant such action.

IT IS ORDERED that the Plaintiff's request be denied and that the Special Master continue to oversee matters in this case

SO ORDERED this 12th day of April, 2007

/s/ Katherine K. Lumsden
Judge Katherine K. Lumsden

IN THE SUPERIOR COURT
OF HOUSTON COUNTY
STATE OF GEORGIA

IN RE: BONNIE HARBUCK	
BONNIE HARBUCK, Plaintiff	
V.	CIVIL ACTION #2006-V-84734-N
ALL PERSONS KNOWN AND UNKNOWN WHO CLAIM ADVERSELY TO PLAINTIFF'S TITLE TO LAND	

ORDER

(Filed Dec. 6, 2006)

There being a case pending concerning the ownership and title of certain property adjacent to Plaintiff's residential lot, and the Court having designated a Special Master to hear the controversy and decide the issue, and the Court further having advised all of the interested parties that the disputed property may be used for purposes of ingress and egress to the property adjacent to the Plaintiff's lot, and Plaintiff having undertaken to block ingress and egress by parking vehicles on the disputed property.

Now therefore, the Court does hereby order that the vehicles be removed from the disputed property and that ingress and egress across the property be permitted and not interfered with in any way whatsover. The Houston County Sheriff's Department

is hereby authorized to assist in the enforcement in this order and to remove any vehicles that are parked upon the property and blocking ingress or egress.

SO ORDERED, the 6th of December, 2006.

/s/ George F. Nunn, Jr.
George F. Nunn, Jr.
Judge, Houston Superior Court

Cc: Houston County Sheriff's Department
Michelle Smith, Attorney
Bo Adams, Attorney